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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY DOROUGH,

Defendant and Appellant.

A136784

**(Sonoma County
Super. Ct. No. SCR554636)**

Defendant Jeremy Dorough appeals from an order revoking his probation and sentencing him to prison. His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We find no arguable issues and affirm.

BACKGROUND

Defendant and Billy Cuda, a codefendant in the proceedings below, went to the home of Gerald Bennett to retrieve computer equipment purportedly owned by defendant. They beat Bennett with a crowbar, causing him to suffer serious facial injuries, and made threats to Bennett's wife. Although the underlying circumstances are disputed, it appears defendant had been involved in another altercation in which Bennett had broken the windshield of defendant's car.

Based on the attack upon Bennett, defendant was charged with attempted murder, aggravated assault and criminal threats, along with weapon use and great bodily injury enhancement allegations. (Pen. Code, §§ 664, subd. (a), 422, 245, subd. (a)(1), 12022,

subd. (b)(1), 12022.7, subd. (a).)¹ Defendant entered into a plea agreement with the district attorney, under which he pled no contest to a single count of assault by means of force likely to cause great bodily injury and admitted a great bodily injury enhancement. (§§ 245, subd. (a)(1), 12022.7, subd. (a).) The written plea agreement indicated defendant could receive a maximum sentence of seven years, but “Prosecution agrees to mitigated term of 2 yrs + 3 year GBI enhancement for a 5 year Lid/Top.” The court stated it would consider probation, noting “the People’s top is just that, a top.” In taking the plea, the court advised defendant, “[I]t indicates a maximum of seven years, and the People have agreed to a top of five years, certainly if you are sentenced to prison then you would get no more than five. But if you are sentenced to probation, and later violate your probation, you could [serve] up to seven years, certainly we are not expecting that to happen, do you understand that?” Defendant indicated he did. At the sentencing hearing, the court imposed a prison sentence of seven years (the four-year upper term on the assault count plus three years for the great bodily injury enhancement), suspended execution of that sentence, and placed defendant on probation for three years. Codefendant Cuda entered into a similar plea agreement.

Defendant was allowed to return to Louisiana to live while on probation. About a year and a half later, his probation was summarily revoked based on his use of illegal drugs, missed appointments with his probation officer, and his driving on a suspended license. Defendant admitted the alleged violations and was sentenced to prison for the previously-imposed seven-year term. The court rejected defendant’s request to reinstate probation conditioned on his participation in the Delancy Street residential drug treatment program. The court cited the brutality of the offense and noted defendant had been dishonest with the court about having a drug problem.

DISCUSSION

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note appointed counsel has filed a *Wende/Anders* brief raising no issues, defendant has been

¹ Further statutory references are to the Penal Code.

advised of his right to file a supplemental brief, and defendant did not file such a brief. We have independently reviewed the entire record for potential error and find none.

Defendant pled no contest to a violation of section 245, subdivision (a)(1) and admitted a great bodily injury enhancement allegation under section 12022.7, subdivision (a). The terms of the agreement called for a “lid” or “top” of five years in prison, with the understanding the court would consider a grant of probation. The court also advised defendant this five-year “lid” or “top” would not apply if defendant violated probation, and he would then face a maximum sentence of seven years in prison. The initial grant of probation and the sentence ultimately imposed were consistent with the terms of the plea agreement. Moreover, defendant did not appeal from the judgment imposed at the original sentencing and has forfeited any challenge to the seven-year sentence. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421.)

Defendant admitted the alleged probation violation and has not obtained a certificate of probable cause as is necessary to challenge the revocation based on that admission. (§ 1237.5.) The court’s decision to impose the previously-suspended prison sentence rather than reinstating probation was not an abuse of its broad discretion. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.)

We are satisfied defendant’s appointed attorney has fully complied with the responsibilities of appellate counsel and conclude no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.